

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

MDL No.: 2419

THIS DOCUMENT RELATES TO:

Judge Rya W. Zobel

All cases concerning Specialty Surgery Center,
Kenneth R. Lister, M.D., and Kenneth Lister,
M.D., P.C.

JOINT MOTION FOR CLARIFICATION OF THIS COURT'S ORDER (DKT. # 2827)

Defendants, Specialty Surgery Center, PLLC (“SSC”), Kenneth R. Lister, M.D. (“Dr. Lister”), and Kenneth Lister, M.D., P.C. (“Dr. Lister’s Practice”) (collectively “SSC Defendants”), and the Plaintiffs’ Steering Committee (the “PSC”), by and through counsel, move for entry of an order clarifying this Court’s order (Dkt. # 2827), and would state:

1. The SSC Defendants and the PSC seek clarification of the Court's Amended Scheduling Order (Dkt. # 2827) and its application to the SSC Defendants.

2. The Order is styled for “All Tennessee Actions”; however, on February 12, 2016, this Court entered an Order titled “[Proposed] Order Modifying Case Management Deadlines in Special Surgery Center Cases” (Dkt. # 2652), which provided the following case management deadlines:

- Close of Common Fact Discovery: 30 days after the Court's ruling on the PSC's forthcoming Motion(s) to Compel or the Court's ruling on a Rule 12(b) dispositive motion by Calisher & Associates, Inc., whichever is later.

- Opening Common Expert Reports: 30 days from the close of common fact discovery.
- Rebuttal Common Expert Reports: 30 days from the disclosure of opening common expert reports.
- Reply Common Expert Reports: 15 days from the disclosure of rebuttal common expert reports.
- Common Expert Deposition Deadline: 15 days from the disclosure of reply common expert reports.
- All other pretrial deadlines: to be determined.

3. On January 26, 2016, the Court issued an order on the PSC's Motion to Compel SSC and Dr. Kenneth Lister to Provide Documents and Testimony (Dkt. # 2612). However, this Court has not yet ruled on a Rule 12(b) dispositive motion by Calisher & Associates. Thus, pursuant to this Court's order entered on February 12, 2016 (Dkt. # 2652), the thirty (30) day period by which to base the close of common fact discovery for the SSC Defendants' cases has not yet begun. As such, the SSC Defendants and the PSC move for clarification of the Court's April 25, 2016 order (Dkt. # 2827) to establish that it is not applicable to the SSC Defendants cases, but rather, this Court's order of February 12, 2016 (Dkt. # 2652) establishes the case management deadlines for the Defendants' cases.

WHEREFORE, SSC Defendants and the PSC respectfully request that this Court enter an order clarifying its previous Order (Dkt. # 2827), with respect to its application to the Defendants.

Respectfully submitted,

/s/ Kent E. Krause

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be served via electronic mail or regular US mail to those participants identified as unregistered this the 3rd day of May, 2016.

/s/ Kent E. Krause
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